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IN REPLY REFER TO

COMNAVLEGSVCCOMINST 5530.2B
JAG 63
19 Aug 09

COMNAVLEGSVCCOM INSTRUCTION 5530.2B

From: Commander, Naval Legal Service Command

Subj: NAVY COURTHOUSE SECURITY PROCEDURES

Ref: (a) The Judicial Conference of the United States, U.S.
Courts Design Guide, 2007 edition

Encl: (1) Courthouse Courtroom Tiering

1. Purpose. To promulgate security policy and procedures for Navy courthouses.

2. Cancellation. COMNAVLEGSVCCOMINST 5530.2A.

3. Background

a. An effective courthouse security program is essential for the proper administration of military justice. Open public access for military justice proceedings requires a secure environment in which all who attend courtroom proceedings are safe and free from intimidation.

b. Reference (a) provides guidance on the planning and design of federal court buildings. This guidance, as well as advice from the Naval Criminal Investigative Service and local installation security departments, serves as the basis for this instruction. While the structure and location of Navy courtrooms will on occasion require variances from reference (a), Commanding Officers (COs) shall meet the minimum standards established by this instruction and implement additional measures when required by local circumstances.

c. For purposes of this instruction, "courthouse" is defined to include:

(1) The combined internal space housing Navy courtrooms, public spaces, e.g. quarterdeck, entrances and exits;

(2) Judicial, witness, member, and spectator spaces;

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(3) Trial and defense counsel spaces; and

(4) The external areas, such as parking lots, that support military justice proceedings.

4. Applicability

a. This instruction applies to all military justice proceedings conducted in a Naval Legal Service Command Courthouse, regardless of the seriousness of the allegations.

b. For purposes of this instruction a "military justice proceeding" is defined to include all phases of:

- (1) Article 32 investigations;
- (2) Summary courts-martial;
- (3) Administrative Separation Boards;
- (4) Boards of Inquiry;
- (5) Special courts-martial;
- (6) General courts-martial; and
- (7) Appellate hearings.

5. Policy. Courthouse security measures should address deterrence, detection, and limitation of risk. Most importantly, courthouse security measures should focus on removing opportunities for violence, especially violence perpetrated with a weapon. Lack of readily available financial resources or physical facility limitations must be brought to the immediate attention of Commander, Naval Legal Service Command (CNLSC). In the interim, the best possible remedial measures will be implemented. Where direct purchasing of security equipment is not immediately possible, commands should seek to rent and/or borrow the necessary equipment to ensure all security precautions are implemented. Where insurmountable facility limitations exist, and security concerns dictate, consideration should be given to transferring the case to a location where increased security measures can be implemented.

6. Roles & Responsibilities. The command primarily responsible for courthouse and courtroom security is the Region Legal Service Office (RLSO), regardless of its location in relation to the courthouse or whether a non-Navy entity is operating a legal proceeding in the courthouse. The RLSO will coordinate the

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security program with the Circuit Judge and with the CO of the local Naval Legal Service Office (NLSO). While the NLSO will retain primary responsibility for its spaces, the RLSO is ultimately responsible for ensuring the implementation of the courthouse security program, and of all elements of that program involving threat assessments, security procedures, and facility upgrades.

7. Implementation. This instruction shall take effect immediately. Where there is apparent conflict with existing Judge Advocate General and/or CNLSC instructions, the conflict should be brought to the immediate attention of CNLSC, with this instruction superseding other instructions pending resolution of the conflict. With respect to instructions not issued by the Judge Advocate General or CNLSC, this instruction should be read and applied in conjunction with those instructions. The security requirements contained within this instruction provide minimum standards of compliance. Commands and the Trial Judiciary will implement stricter measures as circumstances warrant.

8. Security Discrepancies

a. Funding. Security discrepancies requiring funding must be promptly documented as an unfunded requirement with the Installation CO, Base Public Works Officer (if facilities-related), Office of the Judge Advocate General (OJAG), and CNLSC. If the discrepancy is facilities-related, the RLSO CO is responsible for seeking guidance from and submitting a project funding request to Code 63 and coordinating the project with NAVFAC, FISC or SPAWAR, as appropriate.

b. Tiering. Funding decisions made in response to documented security discrepancies shall be based, in part, on the tiering of courthouses. Courthouses shall be tiered based on a variety of factors; however, the volume of activity at each courthouse shall be the primary factor when tiering courthouses. Courthouse activity shall be determined based upon on the number of Article 32 investigations, summary courts-martial, special courts-martial, and general courts-martial at each courthouse on an annual basis. Enclosure (1) pertains.

9. Waiver. Where the CO determines that this instruction does not apply to a specific courthouse situation or that a deficiency is not readily correctable, a waiver will be requested. RLSO COs will request, in writing from CNLSC, a waiver for any deficiency that exists in a courthouse within their command. Waivers will describe the deficiency and explain

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the command's efforts to develop a suitable alternative solution to mitigate risk or the plan in place to correct the deficiency with a projected completion date.

10. Courthouse Building

a. Ingress. There shall be a single controlled point of public entry to courtrooms when in use for military justice proceedings. The control point will be positioned to allow for smooth flow of foot traffic through the metal detection area and should not have a direct line of sight into courtrooms, witness waiting rooms, or trial counsel/defense counsel offices. A telephone and duress alarm shall be located in the immediate area of the control point.

b. Metal Detection Devices. The use of properly calibrated metal detection devices, walk-through and/or handheld, shall be used for all persons seeking entrance to a courtroom when military justice proceedings are ongoing. Metal detectors may also be employed on a continuous basis if deemed necessary and appropriate. Where possible, the metal detector should be placed at the entry of the internal courthouse spaces instead of the courtroom, so as to minimize the threat throughout the entire courthouse.

(1) Responsibility. The RLSO Security Officer shall be designated, in writing, as being responsible for ensuring the correct installation, calibration, and use of metal detection devices. The RLSO Security Officer is also responsible for ensuring the presence of either base security personnel (Master-At-Arms, Department of Defense Police, and/or Auxiliary Security Force personnel) or command personnel, to use the metal detector. These personnel must be trained and prepared to operate the metal detector and manage the flow of courthouse traffic. Further, personnel without law enforcement training must be specifically trained in the proper manner of handling a potentially dangerous situation or interacting with a non-compliant visitor.

(2) Persons with Disabilities. Because the military courthouse is in a public government building, the command security program must ensure security measures are in place for individuals with disabilities that may prevent them from walking through a metal detector.

c. Facility Access. During all periods of judicial proceedings, all participants and spectators entering the courthouse shall enter via one controlled point of entry, and

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pass through the metal detector. Persons passing through the control point shall be required to place items that will cause the metal detector to alarm on a table or in a tray to have said items inspected. All bags, purses, and briefcases shall be inspected for weapons and/or potential weapons such as, but not limited to, guns, knives, or items that reasonably may be used as weapons. Visitors shall be required to sign in and be issued visitor badges that are visibly different from any badges worn by facility personnel. Badges shall be displayed at all times. In instances where there are separate entrance points for other customers or legal assistance clients, appropriate action, such as infrastructure modifications and/or procedural measures, must be taken to prevent access by those individuals to unauthorized areas of the building.

d. Escorts. The convening authority and the brig CO/Officer-in-Charge are responsible for transport and custody of pretrial confinees and convicted personnel at all times within the courthouse. During periods when the accused needs to privately confer with defense counsel at the courthouse facility, the escort shall maintain constructive custody by maintaining a post stationed between the accused and the nearest exit points.

e. Security Personnel

(1) Armed. Introduction of firearms within the courtroom, other than for evidentiary purposes, shall be subject to the discretion of the presiding military judge consistent with Navy-Marine Corps Trial Judiciary Instruction 5810.5 series. Firearm safes shall be available for storage of law enforcement weapons, and will be located so as to provide constant supervision when the safes are in use.

(2) Periodic Inspections. Security sweeps of the courthouse will be conducted on the day of any judicial proceeding, prior to the commencement of the each proceeding of the day, prior to reopening the courtroom to visitors after any vacation of the courtroom (e.g., lunch, extended recess), or at any time that the RLSO CO or his or her designee(s) deem warranted by circumstances.

(3) Threat Assessments. Comprehensive, annual courthouse threat assessments are to be undertaken with the assistance of law enforcement experts, including the Naval Criminal Investigative Service, installation law enforcement, and other federal or state law enforcement agencies, at times considered appropriate by the RLSO CO. The Courthouse Security Annual Assessment Survey shall be completed for each courtroom,

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and the results of such annual assessments shall be provided to OJAG, Code 63 upon completion.

f. Internal/External Security Concerns

(1) Surveillance Systems. The deterrent impact of surveillance cameras, when compared to their relatively low cost, can be significant. Video cameras linked to a centralized monitoring area, preferably at the primary point of ingress, shall be utilized to monitor sensitive internal/external areas that are not easily observed by courthouse staff.

(2) Duress Alarms. The courthouse facility shall be equipped with a functioning duress alarm, which automatically notifies base security and the remainder of the courthouse facility, of an emergency at the courthouse.

(3) Firearm Safes. Courthouse facilities shall possess lockable firearm safes within RLSO spaces to facilitate weapon storage. Firearm safes shall be located to provide continuous supervision when they are in use. RLSO COs shall designate, in writing, individuals responsible for supervising the safes.

(4) Access Controls. Access control systems, activated by biometric readers, cipher locks, swipe cards, proximity cards, or deadbolt, shall be installed within the courthouse to limit access to sensitive areas, such as judicial chambers, trial and defense counsel spaces, and other locations as appropriate.

11. Courtroom Layout and Roles & Responsibilities

a. Judge's Bench

(1) Placement. Optimally, the judge's bench shall be elevated as compared to the remainder of the courtroom surroundings, and positioned at a safe distance from counsel tables, as determined by the Courthouse Security Committee. Moreover, the judge's bench shall be positioned so as to provide the judge with his or her own ingress/egress to the courtroom.

(2) Duress Alarm. The judge's bench shall be equipped with a functioning duress alarm, which automatically notifies base security and the remainder of the courthouse facility, of an emergency at the courthouse.

b. Court Reporter. In an emergency situation and with circumstances permitting, the court reporter shall take

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appropriate action to preserve the record, if possible, and upon completing same, seek shelter in a secure location.

c. Bailiff. Where possible and while a judicial proceeding is in session, the bailiff shall position himself or herself between the accused and the testifying witnesses and military judge. The bailiff shall be subordinate to the direction of the military judge and will act accordingly.

d. Members' Box. The members' box shall be positioned so as to provide the members with a separate ingress/egress to the courtroom from the general public and participants.

e. Trial/Defense Counsel Tables. Counsel tables shall be positioned at a safe distance from the judge's bench and witness box, as determined by the Courthouse Security Committee.

f. Gallery. The gallery should be positioned to face the judge's bench. Permanent seating, secured to the deck or attached together, is preferred to prevent the use of temporary/removable seating as projectiles.

g. Accused. The right of the accused to a fair trial must be the driving force; the mere presence of security measures, such as restraints, may indicate to a member that the person is dangerous, which in turn may deprive the accused of a fair trial. Notwithstanding these concerns, security needs may mandate that the accused be restrained in the event the accused exhibits a threat to safety in the courthouse. The military judge exercises the authority to restrain the accused as appropriate, pursuant to Rules 801 & 804, Rules for Courts-Martial.

h. Responsibilities in an Emergency Situation. The military judge is responsible for directing emergency action, unless conditions are such that the military judge must vacate the courtroom.

12. Courthouse Support Spaces

a. Judge's Chambers

(1) Duress Alarm. Judicial chambers shall be equipped with functioning duress alarms, which automatically notify base security and the remainder of the courthouse facility, of an emergency in the chambers.

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(2) Chambers Location. Judicial chambers shall be located in an area of controlled access not directly available to non-staff members within the courthouse.

b. Members' Deliberation Room. The deliberation room shall be soundproof and have a separate ingress/egress access to the courtroom.

c. Trial/Defense Counsel Offices. Trial and defense counsel offices shall be located in an area of controlled access not directly available to non-staff members within the courthouse. The NLSO CO retains responsibility for security of defense counsel spaces.

d. Witness Waiting Areas. Separate waiting area rooms for both prosecution and defense witnesses shall be provided. Access from the waiting areas to the courtroom should be as short and direct as possible.

e. Heads. Separate facilities should be designated for the military judge and members, such that they are non-accessible to the public. Where possible, heads intended for use by court participants and spectators should be located within the controlled courthouse area to avoid the need for exiting and re-entry through the control point. All heads within the courthouse must contain posted warnings against discussing judicial proceedings.

f. Ground Floor Spaces. Windows on the ground floor of the courthouse must remain locked at all times, except when the occupant of a ground floor office is physically within the space. Where security assessments have determined a need, window grating or intrusion detection systems shall also be installed.

13. Security Assessments

a. Requirements. The personal involvement of senior leadership is critical to maintaining a satisfactory courthouse security program. The RLSO CO will chair an area Courthouse Security Committee. Other Committee members shall include the Circuit Judge, the NLSO CO, and the RLSO and NLSO Security Officers; the senior trial counsel and senior defense counsel should act as advisors. The Courthouse Security Committees shall also invite representatives of the Naval Criminal Investigative Service, the Base/Installation Security Officer and, in those courthouses with significant facilities-related discrepancies, a representative from the Public Works Department (PWD) to attend as advisors. As appropriate, invitations should

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also be extended to local, state, and federal security experts in an effort to achieve the highest level of readiness possible. The Security Committee shall be responsible for courthouse security throughout the area of responsibility and shall meet not less than quarterly. Minutes of the meeting will be kept, and are subject to command inspection review.

b. Standard Operating Procedure (SOP). RLSO COs will ensure that a written SOP is developed to cover those features of operations that lend themselves to a definite or standardized procedure. Additionally, the SOP will address all reasonably anticipated Courthouse Security risks and provide procedures that can be tested during periodic drills.

(1) RLSO Training Requirements. Where RLSO staff members are used to provide security for judicial proceedings, the SOP will contain specific sections detailing the training requirements for each watch station (metal detector monitor, gun safe supervisor, etc.).

(2) SOP Reviews and Updates. The Courthouse Security Committee will provide input and guidance to the RLSO CO regarding the need to update or change the SOP. A full review by the Committee and re-issuance of the SOP by the RLSO CO will be done no less than annually.

c. Drills. Periodic security drills, involving all courthouse personnel and installation security, shall be conducted at least quarterly to ensure all hands know their respective roles in case of a security or other emergency. Drills will be as realistic as possible; however, safety is of paramount concern and appropriate safety controls will be in place at all times during all drills.

(1) After-action Reports (AARs). The Courthouse Security Committee shall oversee the drills and will document results and action items within after-action reports (AARs). AARs will be reviewed during command inspection review. All electronic equipment, including duress alarms, should be tested at least quarterly to ensure proper functionality.

(2) Reporting Requirements. RLSO COs are responsible for providing drill AARs to their Courthouse Security Committee, OJAG (Code 63) and the OJAG Inspector General (Code 002) no later than ten (10) business days after the end of the quarter. AARs must contain a plan of action for ensuring discrepancies noted therein are resolved.

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(3) No Notice Drills. Each courthouse is subject to no notice security drills. These drills will test compliance with this instruction and may occur at anytime.

d. Self-Assessments. Continuous self-assessment is required. Security improvements not specifically required by this instruction, but determined to be necessary, should be reported.

e. Change of Location. In military justice proceedings that have been determined to be high risk by the Courthouse Security Committee or RLSO CO, consideration shall be given to moving the proceeding to the most secure courthouse facility, if the proceeding is not already located there. Where a change of location is not possible, the Courthouse Security Committee will determine the best course of action to provide for the highest degree of safety and security for all personnel. This course of action shall be noted in the Committee's meeting minutes.

14. Action. COs, Officers-in-Charge, and Branch Heads shall establish and maintain physical safety and security measures consistent with this instruction.


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COURTHOUSE/COURTROOM TIERING

1. General. The courthouse/courtroom tiering is a process used to assist in prioritizing funding available for courthouse security upgrades. All courthouses/courtrooms are to be classified/tiered based upon the following factors:

a. The volume of activity at each courthouse/courtroom base upon the number of Article 32 investigations, summary courts-martial, special courts-martial, and general courts-martial each year;

b. Location of the courthouse/courtroom in relation to the command's headquarters and its potential use as a regional courthouse.

Navy courthouses/courtrooms will be classified as Tier 1 or Tier 2 based upon these and other criteria presented in this enclosure.

2. Tier 1 Courthouses/Courtrooms

Tier 1 courthouses/courtrooms have the highest volume of activity. A Tier 1 courthouse/courtroom will normally be the region's premiere courthouse/courtroom site and will be capable of handling the most sensitive and high profile cases. Tier 1 courthouses/courtrooms will have in place the highest level of safety and security measures and will receive priority for limited security funds in order to maintain the highest possible level of security. These spaces are typically located at the RLSO headquarters.

3. Tier 2 Courthouses/Courtrooms

Tier 2 courthouses/courtrooms are typically judge-alone hearing facilities or remote facilities with low military justice volume. Courtrooms that have been designated "inactive" by a RLSO Commanding Officer are also considered Tier 2 courtrooms. Funding for safety and security measures at Tier 2 courthouses/courtrooms will be made available on a lower priority than Tier 1 courthouses/courtrooms. Whenever military justice proceedings are held at Tier 2 courthouses/courtrooms, the RLSO Commanding Officer will implement appropriate supplemental security measures, to include ensuring sufficient Master-At-Arms or trained command personnel are present in order to reduce risk and to maintain physical safety of the proceedings, coordination with Base Security to increase awareness of judicial activity and need for oversight, increased

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RLSO staffing, additional training for staff and security personnel, careful attention to detail in conducting routine sweeps and personnel screening, and any other measures deemed necessary by the RLSO Commanding Officer. Where determined to be appropriate by the RLSO Commanding Officer and the Base Commanding Officer, formal agreement such as a memorandum of understanding (MOU) will be initiated in order to more effectively ensure coordination and mutual support during military justice proceedings. Code 63 is available to assist in development of MOUs.

4. Tier Factors. *Table 1* provides the factors and qualifications required to be rated as a Tier 1 or 2 courthouse/courtroom. *Table 2* provides the list of Navy courthouses/courtrooms and their current tier status.

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| Courthouse/Courtroom Tiering Factors | Tier 1 | Tier 2 |
|--|--------|--------|
| Volume of courthouse/courtroom activity | | |
| Courthouses/courtrooms with the highest two-thirds of courts-martial and Article 32 investigation activity | X | |
| Courthouses/courtrooms co-located with a RLSO headquarters | X | |
| Courthouses/courtrooms with the lowest one-third of courts-martial and Article 32 investigation activity | | X |
| Inactive Courthouses/courtrooms | | X |

Table 1 Tiering Factors

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NLSC COURTHOUSES/COURTROOMS TIER I-II**TIER I**

| |
|--------------------------|
| Washington B58 RLSO NDW |
| Norfolk #1 RLSO MIDLANT |
| Norfolk #2 RLSO MIDLANT |
| Norfolk #3 RLSO MIDLANT |
| Mayport RLSO SE |
| Pensacola RLSO SE |
| Jacksonville RLSO SE |
| Great Lakes RLSO MW |
| Bremerton RLSO NW |
| San Diego #1 RLSO SW |
| San Diego #2 RLSO SW |
| San Diego #3 RLSO SW |
| Pearl Harbor RLSO HAWAII |
| Yokosuka RLSO JAPAN |
| Naples RLSO EURSWA |

TIER II

| |
|--------------------------|
| Washington B183 RLSO NDW |
| Oceana RLSO MIDLANT |
| Groton RLSO MIDLANT |
| Newport RLSO MIDLANT |
| Earle RLSO MIDLANT |
| Brunswick RLSO MIDLANT |
| Millington RLSO MW |
| Fort Worth RLSO SE |
| Ingleside RLSO SE |
| GTMO RLSO SE |
| Gulfport RLSO SE |
| Kings Bay RLSO SE |
| New Orleans RLSO SE |
| Bangor RLSO NW |
| Everett RLSO NW |
| Whidbey RLSO NW |
| LeMoore RLSO SW |
| Ventura RLSO SW |
| Guam RLSO JAPAN |
| Sigonella RLSO EURSWA |
| Rota RLSO EURSWA |
| Bahrain RLSO EURSWA |

Table 2 Courthouse/Courtroom Tiering